

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Record No. 15-1530

GTC SERVICES, LLC
Plaintiff - Appellant

v.

REGION Q WORKFORCE INVESTMENT CONSORTIUM;
MID-EAST COMMISSION

Defendants - Appellees

MOTION FOR LEAVE TO FILE SUPPLEMENTAL APPENDIX

Appellees Region Q Workforce Investment Consortium and Mid-East Commission (“Appellees”) hereby move the Court, pursuant to F.R. App. P. 27 and 30, and Fourth Circuit Local Rules 27 and 30, for an Order permitting the Appellees to supplement the Appendix filed by Appellant GTC Services, LLC (“Appellant”) on October 16, 2015 on the grounds that Appellant failed to include portions of the Appendix designated and requested by the Appellees. The proposed supplemental materials are being submitted along with this motion.

The supplemental Appendix items encompass the following, all of which are matters of record:

- (1) The exhibits to the Rule 30(b)(6) deposition of Appellant;¹ (marked in the attached supplemental materials as SJA 1 to 212); and

¹ Appellant included the actual transcript of this deposition in the Appendix, but failed to include any of the exhibits to the deposition.

- (2) The remainder of the exhibits to the Affidavit of Walter Dorsey. (marked in the attached supplemental materials as SJA 213 to 310).²

The original Briefing Order in this case established June 29, 2015 as the deadline for the Appellant to file its opening brief and the appendix. On May 27, 2015, the undersigned counsel sent a letter to the Appellant's counsel via Federal Express, therein designating the portions of the record that the Appellees wished to be included in the appendix. (A copy of this letter is attached as Exhibit A). The above identified materials were specifically referenced in this letter. Counsel for the Appellees enclosed hard copies of these documents (which were available to the public via PACER) as a courtesy to Appellant's counsel.

Appellant's counsel obtained a number of extensions of time from the original deadline of June 29, 2015 until October 16, 2015 in order to file Appellant's opening brief and the appendix.

Having heard nothing whatsoever from Appellant's counsel acknowledging the materials that Appellees had previously requested be included in the appendix or otherwise discussing or confirming the contents of the appendix, counsel for Appellees sent a supplemental letter via Federal Express to Appellant's counsel on September 30, 2015. (A copy of this letter is attached as Exhibit B). In this September 30, 2015 letter, counsel once again specifically identified and

² Appellant included the Affidavit of Walter Dorsey and a portion of Exhibit A to this Affidavit, but failed to include the remainder of the exhibits.

designated all of the materials that the Appellees desired to be included in the appendix, further identifying these materials by their assigned CM/ECF Docket Entry numbers. Once again, the materials that Appellees now seek to be supplemented in the appendix were specifically identified and designated in this letter.

In response to a September 30, 2015 e-mail request by the undersigned counsel requesting identification of the contents of the appendix, Appellant's attorney responded via e-mail on October 2, 2015 as follows: "I submitted everything you gave me into the joint appendix. The only addition was the affidavit of my client." (A copy of e-mail communications between counsel is attached as Exhibit C). Notwithstanding this e-mail, Appellant's counsel failed to include the materials identified in this motion. Moreover, despite requests for the same, counsel for Appellant never provided any identification, listing or copies of the documents that he intended to include in the appendix.

Counsel for Appellees reviewed the appendix filed by the Appellant via the Court's CM/ECF system on Monday, October 19, 2015, the first date that such a review was possible. Upon discovery that Appellant did not include the above identified materials in the appendix, Appellees' counsel immediately both called (leaving a message with an office assistant) and e-mailed Appellant's counsel, seeking an explanation for this omission and requesting that Appellant's counsel

remedy the situation. As of the date of this motion, Appellant's counsel has not responded in any manner whatsoever.

Pursuant to Rule 45 of the Federal Rules of Appellant Procedure and Local Rule 45, counsel for the Appellees hereby gives notice to the Court that he has attempted to contact counsel for the Appellant regarding this motion via e-mail on October 29, 2015 and via telephone on October 30, 2015, leaving a message with an office assistant. As of the filing of this motion, counsel for the Appellees has received no response from counsel for the Appellants.

For the reasons stated hereinabove, the Appellees respectfully request that the Court grant their Motion to Supplement the Appendix.

Respectfully submitted, this the 3rd day of November, 2015.

/s/ Bradley O. Wood
Bradley O. Wood
N.C. State Bar No. 22392
WOMBLE CARLYLE SANDRIDGE &
RICE,
A Limited Liability Partnership
One West Fourth Street
Winston-Salem, NC 27101
Telephone: (336) 721-3600
Facsimile: (336) 721-3660
E-mail: jmorgan@wCSR.com
E-mail: bwood@wCSR.com
Counsel for Defendants-Appellees

CERTIFICATE OF SERVICE

This is to certify that on November 3, 2015, a copy of the foregoing **MOTION TO SUPPLEMENT APPENDIX** was filed electronically with the Clerk of Court using the CM/ECF system, which will automatically provide notice to and service upon the following CM/ECF participant:

Garey M. Ballance
946Y West Andrews Avenue
Henderson, NC 27536
Email: gareymb@gmail.com
Counsel for Appellant

/s/ Bradley O. Wood
Bradley O. Wood
N.C. State Bar No. 22392
WOMBLE CARLYLE SANDRIDGE
& RICE,
A Limited Liability Partnership
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Facsimile: (336) 721-3660
E-mail: bwood@wCSR.com
Counsel for Appellees

EXHIBIT A

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP



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Bradley O. Wood
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Direct Fax: (336) 726-6913
E-mail: bwood@wCSR.com

May 27, 2015

VIA FEDERAL EXPRESS

Garey M. Ballance, Esq.
946Y West Andrews Avenue
Henderson, NC 27536

Re: *GTC Services, LLC v. Region Q Workforce Investment Consortium, et al.*
Civil Action No. 4:13-cv-161-D

Dear Garey:

I note from the Briefing Order entered by the Fourth Circuit that the Appellant's brief and the Joint Appendix are both due on June 29, 2015.

I would respectfully request that the following documents be included in the Joint Appendix:

1. Plaintiff's Complaint;
2. Petition for Removal;
3. Defendants' Answer;
4. Defendants' Motion for Summary Judgment;
5. Exhibits to the Memorandum of Law in Support of the Defendants' Motion for Summary Judgment
 - a. Transcript of Rule 30(b)(6) Deposition of Plaintiff GTC Services, LLC (with exhibits);
 - b. Affidavit of Charlanda Shepard (with exhibits);
 - c. Affidavit of Walter Dorsey (with exhibits); and
6. April 14, 2015 Order of the Honorable James C. Dever III granting Defendants' Motion for Summary Judgment and Motion to Strike Affidavit;

Garey M. Ballance
May 27, 2015
Page 2

7. April 14, 2015 Judgment

I have attached copies of each of these documents for your convenience for inclusion into the Join Appendix. Please give me a call to discuss the contents of the Joint Appendix.

Sincerely,

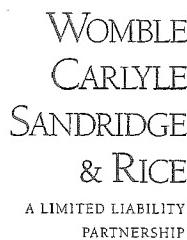


Bradley O. Wood

Enclosures

cc: James R. Morgan, Jr./file

EXHIBIT B



One West Fourth Street
Winston-Salem, NC 27101

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Bradley O. Wood
Direct Dial: (336) 728-7012
Direct Fax: (336) 726-6913
E-mail: bwood@wCSR.com

September 30, 2015

Via Federal Express

Garey M. Ballance, Esq.
946Y West Andrews Avenue
Henderson, NC 27536

Re: *GTC Services, LLC v. Region Q Workforce Investment Consortium, et al.*
Civil Action No. 4:13-cv-161-D

Dear Garey:

I note that you have requested and received yet another extension of time to file your client's opening brief and the joint appendix. In your motion for extension of time that you filed late last night, you represented to the Court "That the record on appeal has been completed and submitted to the Appellate Link for upload."

I am very troubled by this representation, as I have repeatedly asked you (as recently as September 21, 2015) that you share with me what you intend to include in the Joint Appendix. Pursuant to FRAP 30(b), we are encouraged to cooperate and agree regarding the contents of the appendix. I have attempted to do so without response from you. Pursuant to FRAP 30(b), you are to designate to me the parts of the record that you intend to include in the appendix along with a statement of the issues that you intend to present for review. I have repeatedly asked for such a designation, without any response. Please respond immediately regarding what you propose to include in the Joint Appendix so that I can review it prior to your filing it.

As I indicated in my letter to you dated May 27, 2015, I respectfully request that the following documents be included in the Joint Appendix:

1. Plaintiff's Complaint [DE # 1-2];
2. Petition for Removal [DE # 1];
3. Defendants' Answer [DE # 6];
4. Defendants' Motion for Summary Judgment [DE # 26];

Garey M. Ballance
Sepetmber 30, 2015
Page 2

5. Exhibits to the Memorandum of Law in Support of the Defendants' Motion for Summary Judgment, as follows¹:
 - a. Transcript of Rule 30(b)(6) Deposition of Plaintiff GTC Services, LLC (with exhibits) [DE ## 27-2, 27-3, 27-4 and 27-5];
 - b. Affidavit of Charlanda Shepard (with exhibits) [DE # 27-6]; and
 - c. Affidavit of Walter Dorsey (with exhibits) [DE## 27-7 and 27-8];
6. April 14, 2015 Order of the Honorable James C. Dever III granting Defendants' Motion for Summary Judgment and Motion to Strike Affidavit [DE # 35]; and
7. April 14, 2015 Judgment [DE # 36].

I enclosed copies of each of these documents with my May 27, 2015 letter to you for your convenience and for inclusion into the Joint Appendix. In addition, I would request that the following document also be included in the Joint Appendix:

8. Defendants' Motion to Strike Affidavit [DE # 33]

I called you today to again attempt to discuss with you the joint appendix. Your telephone rang endlessly but no one answered. It did not go into voicemail. I have also e-mailed you today as well. Once again, please give me a call to discuss the contents of the Joint Appendix. I look forward to hearing from you.

Sincerely,



Bradley O. Wood

Enclosures

cc: James R. Morgan, Jr./file

¹ As you know, FRAP 30(a)(2) provides that memoranda of law in the district court should not be included in appendix unless they have independent relevance. Accordingly, only the exhibits to the Memorandum of Law in Support of the Defendants' Motion for Summary Judgment, which constitute the evidence in the record, and not the brief itself; should be included in the appendix. The same is true for Plaintiff's briefs filed with the district court in this matter.

EXHIBIT C

Wood, Brad

From: Wood, Brad
Sent: Wednesday, October 07, 2015 9:06 PM
To: 'Garey Ballance'
Cc: Wood, Brad
Subject: RE: GTC Services, LLC v. Mid-East Commission and Region Q Workforce Investment Consortium -- Joint Appendix
Attachments: GTC Services Order Granting Motion for Summary Judgment.pdf; GTC Services Judgment.pdf

Garey:

Per your request, please see the attached Order and Judgment. FYI. They are available for downloading at www.pacer.gov.

V/r

Brad

Bradley O. Wood

Womble Carlyle Sandridge & Rice, LLP
One West Fourth Street
Winston-Salem, North Carolina 27101
Telephone: (336) 728-7012
Facsimile: (336) 726-6913
e-mail: bwood@wcsr.com

From: Garey Ballance [mailto:gareymb@gmail.com]
Sent: Wednesday, October 07, 2015 3:44 PM
To: Wood, Brad
Subject: Re: GTC Services, LLC v. Mid-East Commission and Region Q Workforce Investment Consortium -- Joint Appendix

Brad,

I have added the Motion to Strike the Affadavit. Could you possibly email me the judge's order granting summary judgment and the Judgment. Somehow it wasnt included in what I sent the appellate services company. I need to add those two items. Thanks.

Garey

On Fri, Oct 2, 2015 at 12:01 PM, Wood, Brad <BWood@wcsr.com> wrote:

No, I Fed Ex'd it to you earlier this week. Can you please add it?

V/r

Brad

From: Garey Ballance [mailto:gareymb@gmail.com]

Sent: Friday, October 02, 2015 12:00 PM

To: Wood, Brad

Subject: Re: GTC Services, LLC v. Mid-East Commission and Region Q Workforce Investment Consortium -- Joint Appendix

I have to check. Was that in the first package you sent me. Because I submitted everything you gave me.

Garey

On Fri, Oct 2, 2015 at 11:34 AM, Wood, Brad <BWood@wCSR.com> wrote:

Garey:

Thanks. Did you include the Defendants' Motion to Strike Affidavit?

Very respectfully,

Brad

Bradley O. Wood

Womble Carlyle Sandridge & Rice, LLP

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e-mail: bwood@wCSR.com

From: Garey Ballance [mailto:gareymb@gmail.com]
Sent: Friday, October 02, 2015 11:33 AM
To: Wood, Brad
Subject: Re: GTC Services, LLC v. Mid-East Commission and Region Q Workforce Investment Consortium -- Joint Appendix

Brad,

I submitted everything you gave me into the joint appendix. The only addition was the affidavit of my client.

Garey M. Ballance

On Wed, Sep 30, 2015 at 11:01 AM, Wood, Brad <BWood@wCSR.com> wrote:

Gary:

I noted that you have requested and received yet another extension of time to file your client's opening brief and the joint appendix, documents that were originally due on June 29, 2015.

In your motion for extension of time that you filed late last night, you represented to the Court "That the record on appeal has been completed and submitted to the Appellate Link for upload." I am very troubled by this representation, as I have repeatedly asked you (as recently as my September 21, 2015) that you share with me what you intend to include in the Joint Appendix. I am entitled to know and have input on what is included in the Joint Appendix.

Please respond immediately regarding what you propose to include in the Joint Appendix so that I can review it prior to your filing it.

Very respectfully,

Brad Wood

Bradley O. Wood

Womble Carlyle Sandridge & Rice, LLP

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Winston-Salem, North Carolina 27101
Telephone: (336) 728-7012
Facsimile: (336) 726-6913
e-mail: bwood@wCSR.com

From: Wood, Brad
Sent: Monday, September 21, 2015 2:06 PM
To: 'Garey Ballance'
Cc: Wood, Brad
Subject: GTC Services, LLC v. Mid-East Commission and Region Q Workforce Investment Consortium -- Joint Appendix

Gary:

I hope that you are doing well today.

It is my understanding from the Fourth Circuit's Order filed on September 1, 2015 that the deadline for GTC Services, LLC to file its Opening Brief and the Joint Appendix is next Tuesday, September 29, 2015.

Can you please send to me an index or other listing of what documents/pleadings, etc. that you propose to include in the Joint Appendix so that I can review it prior to your filing the Joint Appendix?

As you may recall, I sent you a letter listing the documents that I wanted included in the Joint Appendix, as well as hard copies of those documents, to you via Federal Express on May 27, 2015.

I look forward to hearing from you.

Very respectfully,

Brad Wood

Bradley O. Wood

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